



Neutral Citation Number: [2025] EWHC 2036 (Comm)

Case No: LM- 2023-000153

IN THE HIGH COURT OF JUSTICE

KING'S BENCH DIVISION

BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES

COMMERCIAL COURT

Royal Courts of Justice, Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 31/07/2025

Before :

MR ANDREW HOCHHAUSER KC
SITTING AS A DEPUTY JUDGE OF THE HIGH COURT

Between :

TONZIP MARITIME LTD

Claimant

- and -

2RIVERS PTE LTD
(formerly named CORAL ENERGY PTE LTD)

Defendant

Emmet Coldrick (instructed by **Wikborg Rein LLP**) for the **Claimant**
James Shirley (instructed by **HFW Middle East LLP**) for the **Defendant**

Hearing dates: 17 (reading), 21, 22, 23, and 24 October 2024

Approved Judgment

This judgment was handed down remotely at 2pm on 31st July 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Mr ANDREW HOCHHAUSER KC :

Introduction:

1. In this action the Claimant, Tonzip Maritime Ltd, the owners of a vessel, “CATALAN SEA” (the “**Vessel**”), claims damages of US\$1,020,099.80 from the Defendant, formerly named Coral Energy Pte Ltd, now called 2Rivers PTE Ltd, in respect of the Defendant’s alleged failure to perform and repudiatory breach of a charterparty to which I will refer below. The Defendant denies the claim and counterclaims the sum of US\$233,600 in respect of the Claimant’s alleged breach of that charterparty. Subject to liability, there were a number of issues relating to the Claimant’s quantum claim, but these narrowed as the trial progressed.

The Hearing, representation and the evidence

2. There was one day’s reading, and the hearing took place over four days, 21-24 October 2024. The Claimant was represented by Emmet Coldrick of Counsel and the Defendant by James Shirley of Counsel. I am grateful to them for their helpful written and oral submissions. I permitted further written submissions to be made following the hearing. The final one was received from Mr Coldrick on 15 November 2024.
3. The trial bundle ran to 3,661 pages. In addition, I heard evidence from the following witnesses of fact:
 - (1) For the Claimant, Mr Gak Yong Tay (“**Mr Tay**”), the Commercial Director for Tankers and Sale and Purchase of Eastern Pacific Shipping Pte Ltd (“**EPS**”), the Commercial and Technical Manager of the Vessel;
 - (2) For the Defendant, Mr Giacomo Manica (“**Mr Manica**”), the Chartering Manager at the Defendant.
4. I found both Mr Tay and Mr Manica to be reliable witnesses, who did their best to give direct and accurate answers to the questions posed and to assist the Court.
5. The Claimant also sought to rely upon the first witness statement dated 24 March 2024 of Adam Emilianou, who is a Director of Corporate Services and General Counsel at EPS. He has been described by the Defendant as a “*pivotal figure in dispute*”, based on the evidence of Mr Tay and the contemporaneous correspondence. There was no notice served in relation to that witness statement as required under the provisions of the Civil Evidence Act 1995, when the statement was served. The notice was served belatedly on 4 October 2024, on the basis that Mr Emilianou was beyond the seas. The Defendant challenged the admissibility of that evidence.
6. In a separate ruling given at the beginning of the trial, I permitted the evidence to be adduced, but I stated that the weight to be attached to that evidence would be a matter for submissions in closing. Having heard the parties’ submissions, I agree with Mr Shirley that, save insofar as it refers to documents, which could have been contained in the trial bundle or is corroborated by independent documents, little weight can be attached to Mr Emilianou’s evidence, which was untested by cross-examination.

The Expert Evidence

7. By the CCMC Order dated 20 October 2023, each party was granted permission to call expert evidence as follows:

- (1) a chartering broking expert dealing with charter market rates, availability of business for the Vessel and other quantum matters within their expertise, including matters within their expertise bearing on the issue of mitigation of loss;
 - (2) a mariner or other suitable expert dealing with whether performance of the Charterers' orders would have required carriage of the Neftisa Cargo by the Vessel in the territorial waters of Denmark, Sweden and/or the United Kingdom ("UK") en route to Aliaga.
8. Pursuant to that order I heard expert evidence from:
- (1) Mr Denis Petropoulos on behalf of the Claimant, a shipbroker with over 40 years' experience in competitive shipbroking, and
 - (2) Mr Timothy Horne on behalf of the Defendant, who also has significant experience in the chartering management and operation of vessels and marine services. He has provided consultancy and expert witness services since 2018.
9. I found that each of the experts did their best to assist the Court and acted in an independent and impartial manner. I was assisted by their evidence, although by the time we reached closing submissions, the number of disputed quantum issues had narrowed considerably.

The Relevant Factual Background

10. On 5 November 2021, the Claimant chartered the Vessel to the Defendant for a voyage from a port in the Ust Luga to Primorsk range (that is, a Russian Baltic Sea port) to the Mediterranean (intention Aliaga, Turkey) carrying oil (the "**Charterparty**").
11. A key clause in the Charterparty was the Eastern Pacific Voyage Charter Trade and Economic Compliance Clause (the "**EPS Sanctions Clause**"), which was set out in the fixture recap. By its terms the Defendant warranted that performance of the charter would not expose the Claimant, the Vessel, its crew or insurers, to any national, international or supranational law or regulation imposing trade and economic sanctions, prohibitions or restrictions. The Charterparty also provided that the Claimant was not obliged to comply with any orders for the employment of the Vessel which in its reasonable judgment would expose it (or the Vessel, its crew or insurers) to the sanctions laws in question. I will set out the detail of that clause in due course.
12. It was common ground that "Sanctions" within the meaning of the EPS Sanctions Clause as regards UK law referred to those provisions contained in the Sanctions and Anti-Money Laundering Act 2018 ("**SAMLA**"), The Republic of Belarus (Sanctions) (EU Exit) Regulations 2019/600 (the "**UK Regulations**"), and as regards European Union ("**EU**") law referred to Council Regulation (EC) No 765/2006 of 18 May 2006 concerning restrictive measures in respect of Belarus and Council Decision 2012/642/CFSP of 15 October 2012 concerning restrictive measures against Belarus, as amended from time to time (the "**EU Regulations**"), (individually the "**UK Sanctions Laws**" and the "**EU Sanctions Laws**" and collectively the "**Relevant Sanctions Laws**").
13. This was before Russia had invaded Ukraine, and there were no sanctions on Russian oil generally, but there were sanctions on certain individuals, including Mikail Gutseriev ("**Mr Gutseriev**"), a Russian businessman with links to the Lukashenko regime in Belarus.

14. On or about 21 June 2021, the EU imposed sanctions on Mr Gutseriev and on 9 August 2021, the UK imposed sanctions on him. Thus, at all material times, Mr Gutseriev was a designated and/or listed person under the Relevant Sanctions Laws.
15. On or about 22 July 2021, it was reported in the Russian financial newspaper, Kommersant, that Mr Gutseriev had:
 - (1) transferred to his brother, Sait-Salam Gutseriev, ultimate beneficial ownership of shares in a company which owned a majority of the shares in a company which owned all of the shares in Joint-stock company Neftyanaya Kompaniya Neftisa, a Russian oil company ("**Neftisa**"); and
 - (2) been replaced as head of Neftisa's board of directors by his brother Sait-Salam Gutseriev.
16. Pursuant to the Charterparty and the Defendant's orders thereunder, on 17 November 2021 the Vessel arrived at the nominated port of loading, Primorsk, and gave notice of readiness ("**NOR**") at 00.01 hours. There was then something of a stand-off between the Claimant and the Defendant.
17. The shipper of the cargo that the Defendant wished to load aboard the Vessel (the "**Neftisa Cargo**") was Neftisa. On 16 November 2021, three draft bills of lading identifying Neftisa as the shipper were provided to the Claimant by agents on behalf of Neftisa and/or the Defendant. On or about 16 and 17 November 2021, the Defendant confirmed to the Claimant that Neftisa was the supplier of the Neftisa Cargo and that the Charterers' orders were to load it aboard the Vessel and carry it to Aliaga. The Neftisa Cargo was being exported and sold by Neftisa to the Defendant FOB Primorsk for money consideration pursuant to a sale contract between Neftisa and the Defendant dated 12 April 2021 (the "**Sale Contract**").
18. Under clause 3.1 of the Sale Contract, property, title and risk was to pass from Neftisa to the Defendant as the Neftisa Cargo passed the inlet flange of the hose connection of the Vessel's intake pipe at the load port.
19. It was not disputed before me that performance of the intended contract of carriage with Neftisa would have taken place in part within the EU and part within the UK. Two of the Vessel's crew were EU nationals and the Claimant's directors were UK nationals, resident in the EU. There was no jurisdictional challenge to the application of the Relevant Sanctions Laws.
20. Performance of the Defendant's orders would have required and/or in the ordinary course of things would have entailed:
 - (1) making funds, namely bills of lading, available to or for the benefit of Neftisa and/or dealing with the same;
 - (2) enabling the export and sale by Neftisa of the Neftisa Cargo for money consideration and thereby indirectly making funds, namely money, available to or for the benefit of Neftisa;
 - (3) the shipment aboard the Vessel by Neftisa its servants or agents of the Neftisa Cargo;
 - (4) the issue by or on behalf of the Claimant and/or the Vessel of bills of lading identifying Neftisa as the shipper of the Neftisa Cargo;

- (5) the entry by the Claimant into bill of lading contracts of carriage with Neftisa as shipper.
21. The Claimant's sanctions screening checks revealed that Neftisa was associated with Mr Gutseriev, who was designated under EU and UK Sanctions Laws, and identified him as the indirect owner of Neftisa and the Chairman of its Board of Directors (reported July 2015-July 2021) and (no further information reported after August 2021) [Trial bundle p3463].
22. In these circumstances, the Claimant refused to load the Neftisa Cargo and called on the Defendant to provide alternative voyage orders [C1/110/3423]. The Defendant tried to persuade the Claimant to change its mind. It provided a letter dated 16 November 2021, on Neftisa headed paper, indicating that Mr Gutseriev was not a member of the Board of Directors of Neftisa and "[i]n accordance with the legislation of the Russian Federation is not the controlling person of 'Neftisa'". The Defendant also provided copies of legal opinions from international law firms, Herbert Smith dated 12 July 2021 and 17 November 2021 and Baker McKenzie dated 14 July 2021, to the effect that, if various factual assumptions were made, Neftisa was not owned or controlled by Mr Gutseriev and so was not subject to EU or UK sanctions. It is the Claimant's case that those law firms did not warrant, or express an opinion supporting, the truth of the factual assumptions on which their legal opinions rested and the Claimant was not persuaded to allow the loading of the Neftisa Cargo.
23. The Defendant did not provide alternative orders to the Vessel and matters came to a head on 24 November 2021, when the Defendant sent an email to the Claimant purporting to cancel the Charterparty on grounds of the Claimant's refusal to load the Neftisa Cargo. Later the same day, the Claimant replied, stating that the Defendant's purported cancellation amounted to renunciation of the Charterparty and that the Claimant terminated the Charterparty for repudiatory breach.
24. If the Charterparty had been duly performed, the Vessel would have been redelivered to the Claimant in the Mediterranean, which was a more favourable location for future employment than Sikka, India.
25. On 17 November 2021 the Defendant fixed another vessel, m/t Zuma, which accepted the Neftisa Cargo.

The Issues

26. The central issue in dispute between the parties was whether the Claimant was entitled to refuse the Defendant's orders to load the Neftisa Cargo. If the answer is 'yes', the Claimant was not in breach, the Defendant had no right to cancel, the Claimant validly terminated the Charterparty for repudiatory breach and subject to a time bar point, its claim succeeds. If the answer is 'no', the claim fails.
27. Whether the Claimant was entitled to refuse to load the Neftisa Cargo gives rise to three sub-issues:
- (1) What is the meaning and effect of the relevant clauses in the Charterparty?
 - (2) What did the relevant sanctions legislation provide?
 - (3) Did Mr Gutseriev own or control Neftisa, or was it reasonable to judge that he did?

The EPS Sanctions Clause

28. The EPS Sanctions Clause provided:

*“(A) THE CHARTERERS HEREBY WARRANT AND REPRESENT TO THE OWNERS THAT NEITHER THE CHARTERERS NOR ANY PERSON OR ENTITY ON WHOSE BEHALF OR UNDER WHOSE DIRECTION THE CHARTERERS ACT OR ASSIST, OR WHO DIRECTLY OR INDIRECTLY OWNS OR CONTROLS THE CHARTERERS, NOR, TO THEIR KNOWLEDGE, ANY PERSON OR ENTITY AT ANY TIME HAVING AN INTEREST IN ANY OF CARGO CARRIED UNDER THIS CHARTERPARTY, ARE DESIGNATED OR SUBJECT TO ANY NATIONAL, INTERNATIONAL OR SUPRANATIONAL LAW OR REGULATION IMPOSING TRADE AND ECONOMIC SANCTIONS, PROHIBITIONS OR RESTRICTIONS ("SANCTIONS") AND THAT ENTRY INTO AND PERFORMANCE OF THIS CHARTERPARTY IS NOT AND WILL NOT BE PROHIBITED OR RESTRICTED BY, AND **WILL NOT EXPOSE THE OWNERS, THE VESSEL OR ITS MANAGERS, CREW, THE VESSEL'S INSURERS OR RE-INSURERS TO SANCTIONS.***

(B) THE OWNERS HEREBY WARRANT AND REPRESENT TO THE CHARTERERS THAT NEITHER THE OWNERS NOR ANY PERSON OR ENTITY ON WHOSE BEHALF OR UNDER WHOSE DIRECTION THE OWNERS ACT OR ASSIST, OR WHO DIRECTLY OR INDIRECTLY OWNS OR CONTROLS THE OWNERS, ARE SUBJECT TO SANCTIONS AND THAT ENTRY INTO AND PERFORMANCE OF THIS CHARTERPARTY IS NOT AND WILL NOT BE PROHIBITED OR RESTRICTED BY, AND WILL NOT EXPOSE THE CHARTERERS TO SANCTIONS.

*(C) **THE OWNERS SHALL NOT BE OBLIGED TO COMPLY WITH ANY ORDERS FOR THE EMPLOYMENT OF THE VESSEL IN ANY CARRIAGE, TRADE, VOYAGE, SHIP-TO-SHIP TRANSFER OPERATION OR OTHER SERVICE WHICH IN THE REASONABLE JUDGEMENT OF THE OWNERS, IS PROHIBITED BY SANCTIONS OR WILL EXPOSE THE OWNERS, THE VESSEL OR ITS MANAGERS, CREW, THE VESSEL'S INSURERS OR REINSURERS TO SANCTIONS. IN THE EVENT THAT SUCH RISK ARISES IN RELATION TO A VOYAGE THE VESSEL IS PERFORMING, THE OWNERS SHALL BE ENTITLED TO REFUSE FURTHER PERFORMANCE AND THE CHARTERERS SHALL BE OBLIGED TO PROVIDE ALTERNATIVE VOYAGE ORDERS***” [emphasis added].

29. The parties made extensive written and oral submissions in relation to the proper construction of the EPS Sanctions Clause. I have considered them all carefully. I do not intend to set out all the points made in detail but summarise the principal ones below.

The Claimant's submissions on the proper construction of the EPS Sanctions Clause

30. The Claimant submitted that the EPS Sanctions Clause expresses the limits of the scope of the service that the shipowner is willing to have its ship perform. The clause should be construed in accordance with the generally applicable principles of contractual construction. The *contra proferentem* approach to construction does not apply.
31. The clause must be construed as a whole. This means that in sub-clause C the subsequent words "*SUCH RISK*" inform the meaning of the words "*EXPOSE ... TO SANCTIONS*". The inclusion of the words "*SUCH RISK*" is a strong indication that the parties, when they used the phrase "*EXPOSE ... TO SANCTIONS*", intended to refer to the risk of sanctions. In the course of oral argument Mr Coldrick advanced his submission in two ways. Initially he submitted that the proper construction of the wording was a risk of exposure to sanctions and then agreed that it was the exposure to a risk of sanctions [See Transcript Day 1, page 17 line 1 to page 18 line 7].
32. Mr Coldrick relied upon the decision of Teare J in *The Triton Lark* [2011] EWHC 2862 (Comm); [2012] 1 All ER (Comm) 639. There Teare J considered a war risks clause in a time charter which permitted the owners to reject orders where "*it appears that the Vessel, her cargo, crew or other persons on board the Vessel, in the reasonable judgement of the Master and/or the Owners, may be, or are likely to be, exposed to War Risks*". The clauses are set out in the judgment at [6].
33. Teare J had to decide the meaning of "*may be, or are likely to be, exposed to War Risks*" [35]-[48], and specifically what degree of risk of war risks (in that case, piracy) had to be apparent [36].
34. The judge did not think that "*may be, or are likely to be*" could plausibly be construed as identifying two alternative degrees of likelihood, because that would have been confusing [38], so he proceeded to consider the meaning of "*likely to be*" [39]. The judge rejected the submission that it meant "*more likely than not*" that the ship would be exposed to piracy, in favour of a requirement that there be a "*real likelihood*" of exposure, the word "*real*" reflecting the need for the conclusion to be based on evidence rather than speculation; a "*bare possibility*" would not have been enough [40].
35. At [38] of his judgment, Teare J stated:

"Sub-clause (2) does not require the master or owner to form a reasonable judgment that the vessel may be or is likely to be attacked by pirates.

It requires the master or owner to form a reasonable judgment that the vessel may be or is likely to be exposed to acts of piracy. Exposure to acts of piracy means that the vessel is subject to the risk of piracy or is laid open to the danger of piracy..." [emphasis added]

36. By analogy, Mr Coldrick submitted that ‘exposure to sanctions’ meant that the owners (or any of the others referred to in the clause) are subject to the risk of sanctions or are open to the danger of sanctions.
37. Contrary to the Defendant’s assertion, nothing in his second judgment in *The Triton Lark* [2012] EWHC 70 (Comm); [2012] 1 Lloyd’s Rep 457 amounted to an abandonment by Teare J of what he said in [38] of his first judgment cited above. At [3] of the second judgment he said:

*“In my judgment at para 38 I said that: “exposure to acts of piracy means that the vessel is subject to the risk of piracy or is laid open to the danger of piracy”. **This** followed (or attempted to follow) an extract from the OED which had been put before me and **appeared to be an appropriate definition.**” [emphasis added]*

38. At [10] of the second judgment, Teare J said:

“I therefore consider that the phrase “exposed to War Risks” should properly be construed as referring to a situation which is “dangerous”. That is consistent with the OED definition which I sought to paraphrase in my judgment but, more importantly, flows naturally from the wording of the clause read as a whole and thereby gives effect to the parties’ intentions.”

39. As regards “a situation which is “dangerous””, plainly a situation can be dangerous without there being any certainty or inevitability that one will come to harm. In [12] of his second judgment, he said: *“What is dangerous will depend upon the facts of the particular case. It will depend upon both the degree of likelihood that a particular peril might occur, in this case acts of piracy, and the gravity or otherwise of the consequences to the vessel, cargo and crew should that peril occur.”*
40. Further Mr Coldrick emphasised that it was important that the EPS Sanctions Clause be understood in its commercial context. Tanker shipping is a fast moving commercial environment and decisions need to be made quickly, for both financial and operational reasons, and without the luxury of time to investigate the sanctions issues in great detail.
41. This context supports the reading of the clause whereby “*exposure ... to sanctions*” refers to a risk or danger of contravening the relevant sanctions laws, rather than the certainty of an “actual breach”. What is contemplated is the assessment of a reasonable commercial person as to whether a real risk or danger is present – which is something that is realistically achievable in a relatively short timeframe – not a quasi-judicial assessment on the balance of probabilities – which is not. If a charterer disagrees on the issue of exposure to sanctions and can find some other ship willing to take the cargo, it will quickly seek to do that. Here the Defendant was able to agree the Zuma fixture on 17 November 2021.

The Claimant’s submissions on “reasonable judgment” and the burden of proof

42. Mr Coldrick submitted that the Court must be satisfied that it was an objectively reasonable decision, in the sense that it was a decision that a reasonable shipowner

could reasonably have come to in the circumstances. In this regard he relied upon the decision of Eder J in *Falkonera Shipping v. Arcadia Energy* [2012] EWHC 3678 (Comm); [2013] 1 Lloyd's Rep. 582 at 597rc [85] by analogy. There the issue was whether the owner, whose prior approval was required, had acted unreasonably in withholding consent to the use of certain vessels in relation to a proposed ship-to-ship transfer to discharge the charterers' cargo.

43. At [85] of his judgment, Eder J stated:

"... it is important to note that the question is not whether the owners' conduct was right (or wrong) but only whether they acted unreasonably in withholding their approval. Thus, the question is not whether the owners' conclusions that led them to refuse consent were justified, if they were conclusions which might be reached by a reasonable man in the circumstances, even though that conclusion might in fact be incorrect or some other persons might take a different view: see Ashworth Frazer, ibid, page 2183. Thus, I accept the owners' submission that they were only in breach if no reasonable shipowner could have regarded their concerns as sufficient reason to decline approval."

44. The Claimant contended that the relevant assessment related to whether a reasonable shipowner could, in all the circumstances and under considerable pressure of time, reasonably have judged that loading the Neftisa Cargo would give rise to an exposure to sanctions. In Teare J's first decision in *The Triton Lark*, he said at [55]:

"...The effect of the clause is that the owners must make a judgment. It must be made in good faith; otherwise, it would not be a judgment but a device to obtain a financial gain. the judgment reached must be objectively reasonable. An owner who wishes to ensure that his judgment is objectively reasonable will make all necessary enquiries. If he makes no enquiries at all it may be concluded that he did not reach a judgment in good faith. But if he makes those enquiries which he considers sufficient but fails to make all necessary enquiries before reaching his judgment I do not consider that his judgment will on that account be judged unreasonable if in fact it was an objectively reasonable judgment and would have been shown to be so had all necessary enquiries been made."

45. Relying on this, Mr Coldrick submitted that what ultimately matters here is the objective reasonableness of the outcome or result (i.e. the objective reasonableness of the decision/the judgment), not the process or procedure (i.e. the steps taken or not taken in the decision-making process, the enquiries made or not made). That approach answered the Defendant's complaints about the absence of sufficient evidence in relation to the Claimant's decision making process and the contention that the Claimant could and should have taken further and better steps to investigate whether Mr Gutseriev controlled Neftisa.

46. In relation to burden of proof, Mr Coldrick submitted that where a shipowner makes a judgment that compliance with an order will give rise to an exposure to sanctions and there is a *prima facie* reasonable basis for that judgment, the evidential burden shifts to the charterer. A prudent shipowner will wish to protect his vessel and its crew. A decision on a serious and important matter such as exposure to risk of breaking the law should be respected by the Court.
47. Provided there is some *prima facie* reasonable basis for the judgment, it would be wrong to approach the matter on the basis that the shipowner's judgment must be regarded as unreasonable unless the contrary is proved. In the alternative he submitted that, it was unlikely that the burden of proof will be of any great assistance in this context.

The Claimant's submissions on the evidence that can be considered when determining reasonableness of the Claimant's decision

48. As a matter of principle, Mr Coldrick submitted that the Court can and should assess the objective reasonableness of the decision in light of all the evidence before it. That included evidence post-dating the Claimant's decision and which therefore was unknown to the Claimant at the time that it made its decision. In the present case that included the UK government guidance referred to in paragraphs 25 and 26 of Mr Emilianou's first witness statement, the UK Statement of Reasons dated 16 December 2022 which stated that

"Gutseriev has himself, or via his companies through controlling directly or indirectly FLLC Slavkali, Russneft and Neftisa, carried on business in a sector of strategic significance to the Government of Belarus" [emphasis added],

the EU Regulations dated 24 February 2023, which refers to Mr Gutseriev as "a Member of the board of directors and shareholder of JSC NKNeftisa" and the decision of the General Court of the EU (the "**ECJ Decision**") in Case T-526/21 Gutseriev v. Council. The Claimant submitted that this judgment falls within an exception to the evidential exclusionary rule, which would ordinarily make judgments between third parties inadmissible as evidence of facts found in them, in respect of public or general rights: see *Petrie v. Nuttall* (1855) 11 Ex 569, Phipson on Evidence 20th Ed., 43-83 and Spencer Bower, 6th Edn, 11.02-11.08.

49. I now turn to the Defendant's submissions on these matters.

The Defendant's submissions on the proper construction of the EPS Sanctions Clause

50. Contractual terms that permit a party to withhold contractual performance are to be construed narrowly, and ambiguity is to be resolved against a party seeking to rely on them: *The Crudesky* [2013] EWCA Civ 905; [2014] 1 Lloyd's Rep 1, per Longmore LJ at [25]; *RTI v. MUR* [2024] UKSC 18; [2024] 2 WLR 1350, at [44]-[46], per Lords Hamblen and Burrows JJSC. Both these cases concerned force majeure clauses, permitting non-performance in certain cases. It is not disputed that the Claimant is the *proferens* with respect to the EPS Sanctions Clause.
51. In his first decision in *The Triton Lark*, Teare J did not fully grapple with the concept of disclosure. It was only after his first decision that the parties invited the judge to decide the meaning of "*exposed to War Risks*". In his second judgment, Teare J revisited the

comments in [38] of his earlier judgment and at [10] concluded that the question upon which the owner had to reach a reasonable judgment turned on the references to a “dangerous” place elsewhere in the relevant clause. At [11] the judge stated that the question was therefore whether there was a real likelihood that the ship would be “*exposed to acts of piracy in the sense that the place will be dangerous on account of acts of piracy*”. Things therefore had moved on from the test set out at [38] of the first judgment.

52. At [37] of the first decision of *The Triton Lark*, Teare J said that the right of a charterer to direct the chartered ship was a “key right” and that any limitation on that right had to be “clearly expressed”. Clauses such as this are not exclusion clauses in the sense that they directly exclude liability for breach, but they are secondary clauses that permit departure from clear and important primary rights established elsewhere in the contract: see *Exclusion Clauses and Unfair Contract Terms*, 13th Ed, §§1-015-1-016, and *The Angelia* [1973] 1 WLR 210, at p. 230H per Kerr J (as he then was).

The Defendant’s submissions on sub-clause (C) of the EPS Sanctions Clause

53. The Claimant’s case must focus on sub-clause (C) because that is the clause that permits the Claimant to act on the basis of a reasonable judgment, rather than actual proof that a state of affairs existed.
54. Mr Shirley submitted that some degree of certainty is required. The Claimant’s reasonable judgment must be that the performance required by the Defendant *is* prohibited or *will* expose one or more of the listed parties to sanctions, not that performance *may* be prohibited, or that there *may* be an exposure to sanctions.
55. On its true construction, sub-clause (C) therefore required the Claimant to determine that the performance required by the Defendant:
- (1) *was* prohibited by sanctions; or
 - (2) *would* mean that any of the listed parties *would be* in breach of sanctions (and therefore exposed to them); and
 - (3) *to do so* reasonably.
56. The Claimant’s submissions glossed over the certainty inherent in sub-clause (C). It argued that the parties used the word *expose* in the sense of “*exposure to a risk or danger*” and that the various parties would have been exposed to sanctions even if performance was *not* prohibited by sanctions and would *not* have put any of the listed parties in breach of sanctions, provided that performance would have given rise to a “*risk of contravening*” or “*being found by the relevant authorities to have contravened*” sanctions. However, Mr Shirley submitted that reading was simply wrong on the wording of sub-clause (C). He relied upon the pointed choice of the words “*is*” and “*will*” rather than “*may*” and said that it was inconsistent with a construction of sub-clause (C) that requires something less than an anticipated actual breach of sanctions. Contrary to the Claimant’s analysis, the words “*such risk*” do not appear to be intended to add anything material.
57. Mr Shirley sought to interpret the words “*SUCH RISK*” as follows:
- (1) words such as these which refer back to a thing that has already been defined cannot be construed so as radically to expand the natural definition of the

preceding words; instead, they simply contain a loose and non-technical reference back to the conditions already defined (“*is prohibited*”, “*will expose*”), in the manner of a reference to “*war risks*” or “*political risk*”;

- (2) they are “*such*” risks, *i.e.* the risk that the Claimant will reasonably judge that performance “*is prohibited*”, or “*will expose*” to sanctions;
- (3) a war risks clause is perfectly properly so called, even if the conditions of its operation require a judgment that piracy or conflict etc *actually exist* (or even that they will exist in future) rather than merely a judgment that there is a *risk* that they exist (or will exist);
- (4) in the sanctions context, “*such risk*” may simply recognise, as in *Mamancochet Mining v. Aegis Managing Agency* [2018] EWHC 2643 (Comm); [2018] 2 Lloyd’s Rep 441, that an actual breach of sanctions only ever gives rise to a risk of prosecution or penalty. In *Mamancochet*, Teare J decided that payment of an insurance claim would only expose an insurer to a sanction if payment of the claim was actually prohibited by a relevant sanctions regime. In reaching that conclusion at [47], the judge expressly rejected a submission (recorded at [42]) that exposure required less than proof of prohibition. Mr Shirley, however, accepted that *Mamancochet* concerned an *ex post facto* decision;
- (5) they are not words that can transform an “*is*” into a “*may be*” or a “*will*” into a “*may*”.

58. Mr Shirley sought to interpret the words “*WILL EXPOSE*” as follows:

- (1) the fact that sub-clause (C) contains both the “*is prohibited*” limb and the “*will expose*” limb, does not mean that the latter is wider than the former: the “*is prohibited*” limb concerns the activity ordered, while “*will expose*” focuses on various parties who might be involved;
- (2) that difference of focus, rather than any difference in leniency of test, appears to be the essential difference between the limbs;
- (3) it might be that an activity cannot be said to be prohibited by sanctions, but it might be that one or more of the listed entities would nevertheless commit a breach of sanctions if the activity is carried out: the clause is intended to apply to a variety of different regimes, and not all possible fact patterns can be predicted;
- (4) even if there is overlap between the limbs, it is perfectly acceptable to say that sub-clause (C) simply approaches the issue of sanctions from two different directions, without there being any difference between them that is important in the present case;
- (5) In *The Triton Lark* case, the words used in relation to “*WAR RISKS*” and “*ACTS OF PIRACY*” were “*MAY BE EXPOSED*”. This is in contrast to the words “*WILL EXPOSE*” here ;
- (6) any doubt about the meaning of the words “*will expose*” should be resolved against the Claimant.

59. The Claimant’s case on the interpretation of sub-clause (C) puts an unacceptable gloss on the plain words and permits a refusal to perform where there would only arguably be a contravention of sanctions. The Claimant’s interpretation, which extends sub-clause

(C) to the risk of contravention, begs the question how serious the perceived risk must be.

The Defendant's submissions on "reasonable judgment" and the burden of proof

60. Mr Shirley submitted that uncertainty as to *whether* an actual breach is to be anticipated is catered for by the provision for the Claimant to make a "*REASONABLE JUDGEMENT*", so that type of uncertainty cannot bear on the meaning of "*IS PROHIBITED*" or "*WILL EXPOSE*"; in which case the Claimant's "*risk of contravening*" or "*being found by the relevant authorities to have contravened*" gloss would be limited in its application to situations in which all the Claimant is reasonably judging is that an authority might find that there has been a contravention even though it was not reasonable to judge that there would be a contravention.
61. By requiring the reasonable judgment to be that of the Claimant itself, sub-clause (C) excludes any submission that the Defendant bore (or bears) the burden of proof. This analysis is not affected by saying that the Defendant needs to establish repudiatory breach. The correct analysis is that the Defendant relies on the Claimant's refusal to perform and the Claimant then sets up sub-clause (C) as permission for non-performance. In such circumstances the Claimant must therefore establish that sub-clause (C) applies.

The Defendant's submissions on the evidence that can be considered when determining reasonableness of the Claimant's decision

62. Mr Shirley submitted that the Claimant has to establish that Mr Gutseriev controlled Neftisa in November 2021 and that it must be more than just "*pure speculation*": see [64] of the decision of Foxton J in *Litasco v. Der Mond Oil* [2023] EWHC 2866 (Comm); [2024] 1 All ER (Comm) 1044.
63. In examining the evidence, the Court must be careful to consider whether evidence concerns the position before the summer of 2021 or after. Any evidence concerning the former is irrelevant to the position after because, on any view, things changed.
64. The version of the UK Statement of Reasons current in November 2021 makes no reference to Neftisa. The current version for Mr Gutseriev on the EU's equivalent list is also not evidence of material available to the Claimant in November 2021, and in any event the reference to Mr Gutseriev as a "*Member of the board of directors and shareholder of JSC NKNeftisa*" can only be a reference to his status prior to his sanctioning. The EU listing in force from 25 June 2012-2 December 2021 made no reference to Neftisa.
65. In relation to the ECJ decision in *Gutseriev v. Council*, Mr Shirley submitted that the on a proper consideration of the materials relied upon by the Claimant, referred to at paragraph [47] above, there is nothing to suggest that that judgment should be treated as some form of judgment *in rem*, and an exception to the exclusionary rule. In any event, it does not address the position in November 2021, and its findings are not relevant.

Discussion and conclusion in relation to the proper construction of the EPS Sanctions Clause and burden of proof

66. I accept the Defendant's submission that the *contra proferentem* approach to construction of the EPS Sanctions Clause does apply here. Applying the approach of Teare J at [37] of the first decision of *The Triton Lark*, the right of a charterer to direct

the chartered ship was a “*key right*” and any limitation on that right had to be “*clearly expressed*”. Clauses such as this are not exclusion clauses in the sense that they directly exclude liability for breach, but they are secondary clauses that permit departure from clear and important primary rights established elsewhere in the contract: see Exclusion Clauses and Unfair Contract Terms, *13th Ed*, §§1-015-1-016, and *The Angelia* [1973] 1 WLR 210, at p. 230H per Kerr J (as he then was).

67. Contractual terms that permit a party to withhold contractual performance are to be construed narrowly, and ambiguity is to be resolved against a party seeking to rely on them: see *The Crudesky* [2013] EWCA Civ 905 ; [2014] 1 Lloyd’s Rep 1, per Longmore LJ at [25]; *RTI v. MUR* [2024] UKSC 18; [2024] 2 WLR 1350, at [44]-[46], per Lords Hamblen and Burrows JJSC.
68. The EPS Sanctions Clause must be construed as a whole. The material part containing the Claimant’s right to withhold contractual performance at sub-clause (C) is obviously key, but regard must also be had to the Defendant’s warranty and representation in sub-clause (A) that it “*WILL NOT EXPOSE THE OWNERS, THE VESSEL OR ITS MANAGERS, CREW, THE VESSEL’S INSURERS OR RE-INSURERS TO SANCTIONS*”.
69. In my judgment the Claimant bears the burden of proof in establishing that it is entitled to rely upon its rights under sub-clause (C). In order to satisfy the “reasonable judgment” test, applying the approach of Eder J in the *Falkonera Shipping* case, it has to establish that it made an objectively reasonable decision, in the sense that it was a decision that a reasonable shipowner could reasonably have come to in the circumstances.
70. I accept Mr Coldrick’s submission that where a shipowner makes a judgment that compliance with an order will give rise to an exposure to sanctions (the proper construction of which I consider below) and there is a *prima facie* objectively reasonable basis for that judgment, the evidential burden shifts to the charterer.
71. Looking at the wording of sub-clause (C), I do not accept Mr Shirley’s submission that the words “*SUCH RISK*” do not appear to be intended to add anything material. These words are not simply surplus to requirements and, in my judgment, must add something, when determining the reasonableness of the judgment.
72. I therefore do not accept Mr Shirley’s submission that, properly construed, sub-clause (C) requires the Claimant to establish that:
 - (1) it *was* prohibited by sanctions; or
 - (2) it would mean that any of the listed parties *would be* in breach of sanctions (and therefore exposed to them); and to do so reasonably.

That puts the test too high in relation in (2).

73. The reference to “*SUCH RISK*” refers to the “*REASONABLE JUDGMENT*” that it “*WILL EXPOSE THE OWNERS ... TO SANCTIONS*”. That means the Claimant does not have to show that any of the listed parties *would be* in breach of sanctions, but that it had reached a judgment that a reasonable shipowner could reasonably have come to in the circumstances that the listed parties were exposed to sanctions, in that they were subject to the risk of sanctions or were open to the danger of sanctions.

74. In the course of oral argument, I put an example of making a reasonable judgment as to whether someone will be exposed to COVID. That does not entail establishing that they would catch COVID, but whether there was a real and reasonable danger that they were subjected to the risk of catching COVID.
75. I am fortified in my conclusion by both decisions of Teare J in *The Triton Lark*. I accept that the wording of the material clauses in that case was different, in that it referred to “*may be exposed*” or “*may expose*” rather than “*will expose*”. However, the judgments related to the meaning of the words “*exposure to acts of piracy*” and “*exposure to War Risks*”. When one reads [3], [5] and [10] of the second decision carefully, I do not find that there is a material departure from his approach at [38] of his first decision, and I accept Mr Coldrick’s submissions in this regard. After hearing further submissions from the parties, at [3] of the second decision, the learned Judge referred back to [38] of his first decision, where he applied the OED definition, which appeared to him to be appropriate, saying “*exposure to acts of piracy means that the vessel is subject to the risk of piracy or is laid open to the danger of piracy.*” At [5] he set out the rival contentions of the parties and at [10] of the second decision, he said:

“I therefore consider that the phrase “exposed to War Risks” should properly be construed as referring to a situation which is “dangerous”. That is consistent with the OED definition which I sought to paraphrase in my judgment but, more importantly, flows naturally from the wording of the clause and thereby gives effect to the parties’ intentions.”

76. I did not find the *Mamancochet* case of great assistance, because, as Mr Shirley frankly admitted, there one was dealing with an *ex post facto* decision, which was not what faced the Claimant in the present case. Furthermore, Mr Coldrick observed, in that case, in contrast to this one, there was no express mention of being exposed to the ‘risk’ of a sanction, a point noted by Teare J at [46].
77. Here what is contemplated by sub-clause (C) is the assessment of a reasonable commercial person as to whether a real risk or danger is present, which is something that is realistically achievable in a relatively short timeframe. As Mr Coldrick submitted, correctly in my view, tanker shipping is a fast moving commercial environment and decisions need to be made quickly.
78. Such a construction is consistent with the *contra proferentem* rule, because it gives meaning to the words “*SUCH RISK*”, in the context of “*EXPOSE TO SANCTIONS*” and when one does so, there is no ambiguity.

Discussion and conclusion on the evidence that can be considered when determining reasonableness of the Claimant’s decision

79. Applying the approach of Teare J in *The Triton Lark* at [55] of his first decision, an extract of which appears at paragraph 44 above, the judgment must be made in good faith and must be objectively reasonable. Moreover:

“...An owner who wishes to ensure that his judgment is objectively reasonable will make all necessary enquiries. But if he makes those enquiries which he considers sufficient but fails to make all necessary enquiries before reaching his judgment I do not consider that his judgment will on that account be

judged unreasonable if in fact it was an objectively reasonable judgment and would have been shown to be so had all necessary enquiries been made.”

80. If the judgment is based on speculation, it will not be an objectively reasonable judgment: see Foxton J in the *Litasco* case at [64].
81. In relation to the admissible evidence that can be considered when assessing the reasonableness of the judgment:
- (1) I hold that, applying the approach in *The Triton Lark* outlined above, I am entitled to have regard to material that was available to the Claimant at the time the decision was made, even though it may not have been considered by it when making the decision, if in fact its decision was an objectively reasonable judgment and would have been shown to be so had all necessary enquiries been made;
 - (2) Materials that were not in existence at the time of the Claimant’s decision or which were in existence at the time of the decision, but which did not relate to the existing state of affairs, are in my judgment of little evidential value and are of no assistance to me. I do not accept Mr Coldrick’s submission that subsequent material which came into existence after the event is evidence which I can and should take into account. In any event the version of the UK Statement of Reasons dated 16 December 2022 does not address the position prevailing as at November 2021. All it says it is that Mr Gutseriev carried on business through Netfisa, without specifying the material time. The version current in November 2021 makes no mention of his involvement in Netfisa;
 - (3) In relation to the ECJ decision in *Gutseriev v. Council*. I accept Mr Coldrick’s submission that this judgment falls within an exception to the exclusionary rule in respect of public or general rights: see *Petrie v. Nuttall* (1855) 11 Ex 569, Phipson on Evidence 20th Ed., 43-83 and Spencer Bower, 6th Edn, 11.02-11.08. I will consider whether the ECJ judgment takes matters any further when considering the evidence below.

On the facts did the Claimant satisfy the provisions of sub-clause (C) of the EPS Sanctions Clause i.e. did the Claimant make an objectively reasonable judgment that there was an exposure to sanctions, in that the listed persons were subject to the risk of sanctions or were open to the danger of sanctions?

82. This entails consideration of the evidence that the Claimant took into account, that which it refused to take into account and that which would have been available to it had it carried out further inquiries, in relation to the issue of whether Mr Gutseriev owned or controlled Neftisa, or whether was it reasonable to judge that he did. Before turning to that, I consider the Relevant Sanctions Laws and the authorities on control.

The Relevant Sanctions Laws

83. I gratefully adopt the summary of the relevant aspects of the Relevant Sanctions Laws set out by Mr Coldrick in his opening and closing written submissions.

EU Sanctions Laws

84. It is convenient to begin with the EU Sanctions Laws, not least because the UK Sanctions Laws, while not in every respect identical, are derived from or a development of the EU Sanctions Laws. The Court of Appeal held in *Mints v. PJSC National Bank Trust* [2023] EWCA Civ 1132; [2024] K.B. 559 at [189] that:

“... SAML A and the regulations made under it continue the EU sanctions regime without any substantive change”.

The EU Regulations

85. Article 2 of the EU Regulation provided that:

“1. All funds and economic resources belonging to, or owned, held or controlled by the natural or legal persons, entities and bodies listed in Annex I shall be frozen.

2. No funds or economic resources shall be made available, directly or indirectly, to or for the benefit of the natural or legal persons, entities and bodies listed in Annex I.”

86. “Funds” is defined in Article 1.1 to include bills of lading. “Economic resources” are defined in Article 1.3 as “‘assets of every kind, whether tangible or intangible, movable or immovable, which are not funds but can be used to obtain funds, goods or services’”.

The EU Best Practices Guidance

87. Guidance as to the meaning and effect of such provisions was given in the *EU Best Practices for the effective implementation of respective measures* dated 4 May 2018 (“the “**EU Best Practices Guidance**””), which stated:

“59. The term ‘making economic resources available’, which is not defined in the Regulations, has been interpreted by the Court of Justice as having a wide meaning ... The prohibition on making economic resources available applies to any mode of making available an economic resource, whatever the consideration ...

60. ... [S]ince such economic resources are frozen, any new contractual arrangement concerning their use or any dealing with them requires prior authorisation ...

*68. It is to be noted that **the indirect making available of funds or economic resources to listed persons or entities may also include the making available of these items to persons or entities which are not owned or controlled by listed entities**”* [emphasis added].

88. In relation to companies controlled by a designated individual, the EU Best Practices Guidance stated:

“66. ... the making available of funds or economic resources to non-listed legal persons or entities which are owned or controlled by a listed person or entity will in principle be

considered as making them indirectly available to the latter, unless it can be reasonably determined, on a case-by-case basis using a risk-based approach, taking into account all of the relevant circumstances ... that the funds or economic resources concerned will not be used by or be for the benefit of that listed person or entity. ...”.

89. Unlike the UK Sanctions Laws (as to which see below), the EU Sanctions Laws do not contain a definition of control.

The UK Sanctions Laws

90. SAMLA confers powers to enact regulations imposing sanctions. The statutory scheme broadly follows the EU law model. For example, section 3 provides for the conferring of powers for the purpose of, amongst other things, freezing “funds” and “economic resources” and “preventing funds or economic resources from being made available to, or for the benefit of” designated persons. “Funds” and “economic resources” are defined similarly to their EU law definitions, which have been referred to above.
91. **The UK Regulations.** Regulations 11 of 15 of the UK Regulations contain the relevant asset freezing provisions and prohibitions on the making of funds and economic resources available to or for the benefit of designated persons, breach of which is made a criminal offence. Each regulation follows a similar pattern. It suffices to refer here to regulation 15 by way of illustration.
92. Regulation 15(1) provides that “[a] person (“P”) must not make economic resources available to any person for the benefit of a designated person if P knows, or has reasonable cause to suspect, that P is making the economic resources so available.”. The prohibition is not merely on knowingly making economic resources available to anyone for a designated person’s benefit. Rather, if economic resources are in fact made available for the benefit of a designated person, it is sufficient for the prohibition to have been breached if P merely had “reasonable cause to suspect” that it was making the economic resources so available.
93. Regulation 15(2) provides “[p]aragraph (1) is subject to Part 6 (Exceptions and licences)”. It has not been suggested that Part 6 is relevant in this case. Regulation 15(3) makes breach of the paragraph 15(1) prohibition a criminal offence. Regulation 15(4)(a) goes on to state that “economic resources are made available for the benefit of a designated person only if that person thereby obtains, or is able to obtain, a significant financial benefit”.
94. Regulation 48 of the UK Regulations provides:
- “A person who commits an offence under any provision of Part 3 (Finance) ... is liable—*
- ...
- (d) on conviction on indictment, to imprisonment for a term not exceeding 7 years or a fine (or both).”*

The material regulations, namely Regulations 11 to 15 of the UK Regulations, are all Part 3 regulations.

The UK provisions in relation to control

95. Regulation 7 of the UK Regulations provides:

“7.— Meaning of "owned or controlled directly or indirectly"

(1) A person who is not an individual ("C") is "owned or controlled directly or indirectly" by another person ("P") if either of the following two conditions is met (or both are met).

(2) The first condition is that P—

(a) holds directly or indirectly more than 50% of the shares in C,

(b) holds directly or indirectly more than 50% of the voting rights in C, or

(c) holds the right directly or indirectly to appoint or remove a majority of the board of directors of C.

(3) Schedule 1 contains provision applying for the purpose of interpreting paragraph (2).

(4) The second condition is that it is reasonable, having regard to all the circumstances, to expect that P would (if P chose to) be able, in most cases or in significant respects, by whatever means and [...] whether directly or indirectly, to achieve the result that affairs of C are conducted in accordance with P's wishes.

96. Paragraph 3 of Schedule 1 provides:

“(1) If shares or rights held by a person and shares or rights held by another person are the subject of a joint arrangement between those persons, each of them is treated as holding the combined shares or rights of both of them.

(2) A "joint arrangement" is an arrangement between the holders of shares or rights that they will exercise all or substantially all the rights conferred by their respective shares or rights jointly in a way that is pre-determined by the arrangement.

(3) "Arrangement" has the meaning given by paragraph 12.”

97. Paragraph 11 of Schedule 1 provides:

“(1) Where a person controls a right, the right is to be treated as held by that person (and not by the person who in fact holds the right, unless that person also controls it).

(2) A person "controls" a right if, by virtue of any arrangement between that person and others, the right is exercisable only—

- (a) by that person,
- (b) in accordance with that person's directions or instructions, or
- (c) with that person's consent or concurrence.”

98. Paragraph 12 of Schedule 1 provides that:

“Arrangement” includes—

- (a) any scheme, agreement or understanding, whether or not it is legally enforceable, and
- (b) any convention, custom or practice of any kind.”

The case law on control

99. In *Mints v PJSC National Bank Trust* referred to at paragraph 84 above, the Court of Appeal considered the submission of Mr Rabinowitz KC for the Appellants at [112] that the definition of control in Regulation 7(4) is:

“apt to cover the case of a designated person who, for whatever reason, is able to exercise control over another company irrespective of whether the designated person has an ownership interest in the other company, economic or otherwise.”

Sir Julian Flaux C, with whom Popplewell and Newey LJJs agreed, went on to hold at [229] that:

“... the use of the words: “having regard to all the circumstances” and “by whatever means” makes it clear that the provision does not have any limit as to the means or mechanism by which a designated person is able to achieve the result of control, that the affairs of the company are conducted in accordance with his wishes. Mr Rabinowitz’s description of regulation 7(4) as applying when the designated person “calls the shots” is an apt one” [emphasis added].

100. The *Litasco* case referred to above, is strongly relied upon by the Defendant. There Foxton J considered the argument that a buyer of crude oil was entitled to refuse to pay sums alleged to be due under a deed of payment by virtue of a sanctions clause in the underlying sale contract. The seller itself was not sanctioned, but the buyer argued that it was subject to control in the relevant sense by a sanctioned individual, Mr Alekperov, and therefore to be treated as if it were sanctioned.
101. The judge considered whether there was an arguable sanctions defence, which meant applying the control test in the Russia equivalent of the UK Regulations, and specifically the provision for control to be established where it was *“reasonable, having regard to all the circumstances, to expect that P would (if P chose to) be able, in most cases or in significant respects, by whatever means and whether directly or indirectly, to achieve the result that affairs of C are conducted in accordance with P’s wishes”*.

102. At [63] the judge stated that:

- (1) *Mr Alekperov was the founder of the seller, and its president and chief executive until April 2022;*
- (2) *in April 2022, Mr Alexperov was sanctioned by reason of his directorship of the seller's parent company;*
- (3) *Mr Alekperov stood down from the seller's board following his sanctioning and now had a shareholding in the seller's parent of only 8.5%, which was not a controlling stake;*
- (4) *he had been provided with no evidence to suggest that Mr Alekperov continued to exercise control over the seller's parent company.*

103. He therefore concluded that at [64]:

"The evidence before me does not, therefore, establish a triable case that Mr Alekperov controls Litasco. The Defendants' contentions to the contrary are pure speculation, which may explain why their Defence was amended to replace what was once a positive case of such control with a non-admission."

104. At [74] Foxton J also considered the control test in Regulation 7(4) and stated:

"I believe the better interpretation of reg 7(4) is that it is concerned with an existing influence of a designated person over a relevant affair of the company ... not a state of affairs which a designated person is in a position to bring about. Were matters otherwise, it would follow that President Putin was arguably in control, for reg 7(4) purposes, of companies of whose existence he was wholly ignorant, and whose affairs were conducted on a routine basis without any thought of him."

105. *Hellard v. OJSC Rossiysky* [2024] EWHC 1783 (Ch), Mr Nicholas Thompsell, sitting as a Deputy Judge of the High Court, examined Foxton J's decision and his interpretation of Regulation 7(4) referred to above. Mr Coldrick suggested that the Deputy Judge cast doubt on the validity of the analysis conducted, but as Mr Shirley pointed out, at [74] he stated that the language of Regulation 7(4) was "*readily reconcilable*" with the approach taken by Foxton J in *Litasco* and indeed cited it with approval at [90]-[91].

106. Further at [76], the Deputy Judge considered four types of control that might be established in relation to the UK Sanctions Laws:

- (1) *de jure* control;
- (2) actual present *de facto* control;
- (3) potential future *de jure* control; and
- (4) potential future *de facto* control.

107. I accept Mr Shirley’s submission that the Claimant appears to rest its case on *de facto*, present or future, rather than *de jure* control.

108. In the *Hellard* case, at [77], the Judge said:

“ii) Actual present de facto control is demonstrated by pointing to circumstances where the putative controller has exercised a decisive influence to control what is happening. There is reasonable cause to suspect it exists where there is reasonable cause to suspect that such events may have occurred. ...

iv) Potential future de facto control requires some particular feature leading one to believe that the putative controller could, if he or she wished, exercise control in some manner otherwise than by the exercise of a legal right or legal power. It is difficult to conceive a manner in which this can be demonstrated since by definition that feature will not be the existence of a legal right or legal power and, as the control has not yet been exercised, it will be difficult to point to circumstances to establish this.”

109. As the Deputy Judge noted at [91]:

“The decision in Litasco is clearly correct when one considers these matters and it does not depend on interpreting Regulation 7(4) in the teeth of its express wording as applying only to existing, rather than possible future de facto control. It is not that the court should ignore the words “if P chose to” in Regulation 7(4). It is that these words cannot be thought to apply if P has no present means of controlling the person in question without the cooperation of others and/or would face penalties or undesirable consequences in obtaining such control.”

110. *Vneshprombank LLC v. Bedzhamov* [2024] EWHC 1048 (Ch) was a decision of Cockerill J and Master Kaye, which was heavily relied upon by Mr Coldrick. At their conclusion at [129], the Judges concluded that, were it necessary to do so, they would conclude that, despite the share transfer in the company under consideration and its sale to a third party, there was reasonable cause to suspect that the company was owned or controlled by a designated person or designated persons within the meaning of Regulations 5-6 of the Russia (Sanctions) (EU Exit) Regulations 2019. Their reasoning is set out at [125]-[128], in particular my attention was drawn to the reference at [125]:

“multiple overlapping indications which suggest that the transfer and sale were not arms’ length transactions.”

It is to be noted that these conclusions were reached despite written declarations from the designated persons concerned that they had no control.

111. At [113] the Judges set out what they describe as “*some uncontentious relevant law*” on the subject of the test of “*reasonable cause to suspect*”:

“

- (1) *The test imports an objective element requiring an evidential foundation. R v Lane and Letts [2018] UKSC 36 at [22] and [24], identifying the objective nature of the standard in the context of the terrorist financing offence in s.17 of the Terrorism Act 2000;*
- (2) *It must be fact-based and genuinely reasonable. R (Ahmed) v HM Treasury [2009] 3 WLR 25, [135] (Sedley LJ);*
- (3) *It requires that on the available information, a reasonable person would, not might or could, suspect that in e.g., a Regulation 11 case, a person whose funds or economic resources are dealt with is a designated person within the meaning of the Regulations. R v Lane and Letts [24]; R (Ahmed) v HM Treasury [136] where Sedley LJ described the ‘may be’ test as “on any rational view, a bridge too far”;*
- (4) *the question whether there are reasonable grounds to suspect must be considered in the round, in a fair-minded review which takes into account all relevant information including undermining material and initial suspicions may be dispelled by information or evidence which undermines what might otherwise be reasonable grounds. National Crime Agency v Baker & Ors [2020] EWHC 822 (Admin) (Lang J);*
- (5) *It is necessary to guard against making unreliable assumptions and to exercise caution in treating complexity of corporate structures as grounds for suspicion. NCA v Baker [95]-[100];*
- (6) *The accuracy and credibility of the sources of evidence relied upon should be evaluated and verified, although such evidence is not limited to that which would be admissible in court. LLC Synesis v Secretary of State for Foreign, Commonwealth and Development Affairs [2023] EWHC 541 (Admin) (Jay J) at [73] “the Court will normally expect that at least some recognition has been given to its inherent quality”;*

The Evidence

112. From the Claimant’s termination email dated 24 November 2021, the judgment that the Claimant appears to have made was that performance of the Defendant’s voyage instructions would have “*exposed Owners to risk of sanctions*” for “*the reasons the Owners identified to Charterers as early as 16 November 2021 and in subsequent correspondence.*”
113. Mr Tay’s evidence was that EPS’s standard due diligence processes included use of third party tools, including Refinitiv/World-Check, which compiles information on sanctioned persons and sources for screening purposes. He said that he was involved in all the correspondence, but the Refinitiv/World-Check searches were conducted not by him, but by one of his colleagues, Olga Venzhina, who still works for EPS.
114. The Refinitiv report on Mr Gutseriev [Trial bundle 3450-3461] said that he was:
 - (1) a 54.53% shareholder of Safmar Group from June 2021 [Trial bundle 3453];
 - (2) Chairman of the Board of Directors of Neftisa from February 2015 [Trial bundle 3453];

- (3) Chairman of the Board of Directors of Safmar Group until June 2021.
115. The Refinitiv report on Neftisa said that Neftisa was:
- (1) *“Associated to sanctioned individual – reported 2021”* ;
 - (2) indirectly owned and chaired by Mr Gutseriev (*“reported Jul 2015-Jul 2021”*) and *“August 2021 - no further information reported”*. [Trial bundle 2563]
116. Ms Venzhina raised a red flag, saying that if Neftisa was involved in the cargo, the Claimant could not lift that cargo. Mr Tay was not able to give evidence from his own knowledge as to whether any Google searches were done but he was certain that there were some WhatsApp messages passing between him and Mr Green and Mr Lucas who worked in the commercial department of EPS’s London office, and who were dealing with this matter, but these messages have not been disclosed. He also spoke with them on the telephone about this matter, although there was no detail of these conversations in his witness statement.
117. The Claimant’s position on 18 November 2021, as appears from an email from Olga Venzhina of that date which was sent to him, was that *“Owners have not been able to confirm whether Mr Gutseriev has de facto control over Neftisa.”* According to Mr Tay, that remained the position at 24 November 2021.
118. Mr Tay was shown a document from Infospectrum, another third party, which Mr Tay said EPS used as part of their due diligence exercises. It related to a company entitled PAO Russneft, which was therein described as *“an associated company of Netfisa”*. It was dated 16 July 2021 and had been downloaded on 11 November 2021. At p5 of the report, under the heading **“Recent Developments”**, it contained the following statement:
- “In its latest annual report, Russneft disclosed that “as at 31 December 2020, the person who is able to control the actions of the Company is Mikhail Safarbekovich Gutseriev”. We note that since this point, Mr Gutseriev has been placed on the EU’s sanctions list in June 2021, due to his close relations with, and interests in, the Belarus economy.*
- We emphasise that Russneft is not sanctioned. However, the event has had some ramifications for the relationship between Mr Gutseriev and Russneft, as Mr Gutseriev is widely reported as having stood down from the board of the company, with the likely intention of giving the company the freedom to manoeuvre in the manner to which it is accustomed.”*
119. It was attached to an email from Mr Green to Mr Lucas dated 11 November 2021, timed at 12:53. Mr Tay said that he had not been shown it at the time, despite being a party to other correspondence, and he accepted that it was something he would have liked to have seen at the time that EPS was making decisions about dealing with the Neftisa Cargo, because *“it would have helped EPS come to the conclusion that there was nothing to be concerned about with the Neftisa cargo”* [Day 2/page 67/lines 5-12]. Mr Tay was part of the group within EPS that made the decision not to accept the Netfisa cargo. That group included Olga Venzhina, who provided background information, Mr Emilianou, Director of Corporate Services and EPS General Counsel

and the CEO of EPS, all based in Singapore, and Messrs Green and Lucas, based in London and who dealt with chartering, although a decision such as this was beyond their authority. He accepted in cross-examination that he personally could not have said whether Neftisa was owned or controlled in any sense by Mr Gutseriev. He knew that he was formerly the owner and Chairman of the Board of Neftisa, but “*we could not be certain ... from the statement that the Defendants were trying to present to them, whether that was still the case, whether he was still in control.*” [Day 2/p71, lines 14-19]. He was formerly the majority shareholder but there were no source documents presented to the Claimant or EPS which demonstrated that he had effectively divested his shares.

120. The Defendant relied on five documents which were either available to the Claimant or which were actually provided by the Defendant to the Claimant, from which it is said that it should have concluded that Mr Gutseriev did not own or control Neftisa. I shall consider each in turn.

The letter on Neftisa headed paper dated 16 November 2021

121. This stated that Mr Gutseriev was not the controlling person of Neftisa; he did not have the right directly or indirectly (through persons under his control) to dispose of more than 50% its voting shares; he does not have the right to appoint the sole executive body and (or) more than 50% of its Board of Directors; he is not a Board member and there were no other grounds in the current legislation of the Russian Federation for Mr Gutseriev establishing control over the company. [Trial bundle 3526]
122. The Claimant makes the following observations on that letter. Everything in it was said to be stated “*based on information provided by the sole shareholder of ... “Neftisa”, THE COMPANY DOLMER ENTERPRISES LIMITED*”. No indication was given of what form that information took or of what if any documents had been provided to the “*Deputy Director General on corporate issues*” who signed the letter. It was said that Mr Gutseriev was not a member of Neftisa’s Board of Directors, but no instrument of resignation, or any other document, signed by him (or indeed any other director of Neftisa) was provided. No Companies House or equivalent official form of any sort was provided. Views were expressed about the extent of Mr Gutseriev’s ownership and control, but they were said to be “*in accordance with the legislation of the Russian Federation*” and, again, on the basis of unexplained ‘information’ said to have been provided. No competent lawyer could reasonably have advised the Claimant that this letter provided a sound basis for discounting the Refinitiv reports.

The Kommersant Newspaper article dated 22 July 2021

123. There was a report in a Russian newspaper, Kommersant, dated 22 July 2021, which stated that Mr Gutseriev had transferred control of Neftisa to his brother and had stepped down as Chairman of Neftisa while remaining a minority shareholder, indirectly owning “*about 7%*”, which figure also took account of the shareholding of his son, Mr Said Gutseriev. The article stated:

“According to lawyers, it is not yet clear whether the EU will evaluate the Neftis[a] deal as an attempt to circumvent sanctions”. This article was available online to the Claimant at all material times.

124. The Claimant's response to this is that it is not understood how it can sensibly be contended that this provided reliable grounds for discounting the Refinitiv reports. If anything, it strengthened the concerns.

The Three Legal Opinions drafted by Herbert Smith and Baker and McKenzie which the Defendant provided to the Claimant in November 2021 (the "Legal Opinions")

125. In summary, these made the following points:

- (1) Mr Gutseriev (indirectly) owned no more than 6.75% of shares/voting rights in Neftisa;
- (2) the majority shareholder in Neftisa was Mr Gutseriev's brother, Mr Sait-Salam Gutseriev, a very wealthy businessman in his own right who was not controlled by Mr Gutseriev;
- (3) there were other minor shareholders with links to Mr Gutseriev, but they too were not controlled by Mr Gutseriev and did not in any event collectively own sufficient shares in Neftisa to give them or Mr Gutseriev control of Neftisa;
- (4) Mr Gutseriev was not a director of Neftisa and did not hold any right to approve or appoint directors;
- (5) Neftisa had nine directors, none of whom was Mr Gutseriev, and its board was elected by decision of the sole shareholder (which was not Mr Gutseriev);
- (6) he did not manage or direct Neftisa, directly or indirectly.

126. In preparing the Legal Opinions, the authors had reviewed, among other documents, the Charter of Neftisa (2nd ed), a list of holders of securities of Neftisa and a letter from Neftisa regarding control of Neftisa, an extract from Neftisa's shareholders register dated 31 May 2021 and certificates of shareholders which "*disclosed the names of Neftisa's ultimate beneficiary owners*".

127. The Claimant made a series of complaints about these Legal Opinions.

128. First, the key question of Mr Gutseriev's ownership and control of Neftisa was fundamentally a question of fact. Yet neither Herbert Smith nor Baker McKenzie verified, or expressed any opinion on, matters of fact. On the contrary, they proceeded on the basis of factual assumptions. Herbert Smith went out of their way to make clear that they expressed no view on the facts, had reached conclusions based solely on information provided to them and had not verified that information and that their stated assumptions had not been verified or investigated.

129. Baker McKenzie began their memorandum by stating "[p]lease note that the memorandum is only for your purposes and may not be used by third parties" and went on to set out four "*key assumptions that have informed this memorandum*" and to state "[s]hould any of the below assumptions be incorrect (or subsequently change), this may impact upon our legal analysis and may potentially expose Neftisa to EU sanctions compliance risks". The assumptions ranged from an assumption as to Mr Gutseriev's percentage share in Neftisa to assumptions that various individuals (including Mr Gutseriev's brother and son) hold their shares for their own benefit and act independently from, receive no instructions from and are not influenced in the exercise of their voting rights by Mr Gutseriev. Mr Coldrick submitted that no competent lawyer could reasonably have advised the Claimant that the Herbert Smith

or Baker McKenzie memoranda provided a reliable basis for discounting the Refinitiv reports and changing its mind.

130. In essence, the Claimant's position was that it was entitled to rely upon the Refinitiv reports, that shifted the evidential burden onto the Defendant and the only real issue is as to whether the materials on which the Defendant relies ought to have provided such reassurance that it can be concluded that no prudent shipowner could reasonably have judged that there was a sanction risk. They submitted for the reasons set out above that the documents on which the Defendant relies fall very far short in that regard.

Discussion and conclusion in relation to whether the Claimant made an objectively reasonable judgment that there was an exposure to sanctions, in that the listed persons were subject to the risk of sanctions or were open to the danger of sanctions?

131. Having considered carefully all evidence and the parties' respective submissions on it, I have reached the conclusion that the Claimant has not satisfied the provisions of sub-clause (C) and it did not make a reasonable objective decision that the listed persons were subject to the risk of sanctions or were open to the danger of sanctions.
132. I have come to that conclusion for the following reasons:
- (1) When one considers Mr Tay's evidence and the contemporaneous documents, the foundation on which the Claimant's decision was built consisted of the Refinitiv reports on Mr Gutseriev and Neftisa. When one examines those reports carefully there is nothing in them which evidences Mr Gutseriev's control, direct or indirect, of Neftisa in November 2021;
 - (2) Whether he did control Neftisa or not is speculation. It is not evidence of an "*existing state of affairs*". As Olga Venzhina stated in her email of 16 November 2021 "*Owners have not been able to confirm whether Mr Gutseriev has de facto control over Neftisa*", and as Mr Tay candidly admitted in his evidence that remained the position on 24 November 2021, when the decision was made. As stated above, he accepted in cross-examination that he personally could not have said whether Neftisa was owned or controlled in any sense by Mr Gutseriev. That is a non-admission, rather than advancing a positive position [see [64] *Litaso*]. This does not satisfy the first two elements of the summary of uncontentious relevant law set out at [113] of the *Vneshprombank* case [see paragraph 111 above]. That in my judgment, adopting the test of Eder J in *Falkonera Shipping* case, is insufficient to amount an objectively reasonable decision that Mr Gutseriev had *de facto* control and therefore entitled the Claimant to rely on the provisions of sub-clause (C). This case falls squarely within the "speculative" category identified by Foxton J in the *Litasco* case;
 - (3) This is particularly so since there was also available to the decision makers at EPS the July 2021 report from Infospectrum, on an associated company of Neftisa, PAO Russneft. Whilst it was clearly known to Mr Green and Mr Lucas on 11 November 2021, well before the Claimant made its decision, for reasons which are unclear, it was not made available to the other members of the decision-making group. As Mr Tay said, he would have liked to have seen it because it would have helped EPS come to the conclusion that there was nothing to be concerned about with the Neftisa Cargo. Although it related to another associated company, Mr Gutseriev is also recorded as having given up his majority shareholding in that company because of his being placed on the EU

sanctions list in June 2021. The rationale for his stepping down from the board of the company was set out in p5 of the Infospectrum report, namely:

“Mr Gutseriev is widely reported as having stood down from the board of the company, with the likely intention of giving the company the freedom to manoeuvre in the manner to which it is accustomed.”

- (4) I do not agree with the Claimant’s analysis set out in paragraph 130 above. In my judgment, there was therefore no evidence (as opposed to speculation) for the Defendant to rebut, although the material that it provided did seek to do so. I do not regard the evidential burden as having shifted to the Defendant. I note the criticisms made by the Claimant in relation to the documents presented by the Defendant and the Kommersant newspaper article which was available online, but they all spoke with one voice. It is not as if they were rebutting contrary evidence which had been produced by the Claimant. Cumulatively it was material which could and should have been taken properly into account when the Claimant reached its decision on 24 November 2021.

The ECJ Decision

133. Given my findings above, I do not find that that the ECJ decision delivered in September 2023 takes matters any further. Mr Gutseriev claimed to have divested himself of the majority of his shares in Neftisa on 21 June 2021 and the judgment records that *“first...he became a minority shareholder in certain companies holding Russneft and Neftisa...”*, (although it does not record exactly when). It goes on to state *“...he has not relinquished any financial gain as he may make therefrom, and second, he remained involved in the management of and even controlled those companies.”* The judgment does not specifically address the position in November 2021. In reaching its findings, the judgment relied upon an updated document on the Safimar Group’s old website, which was archived on 21 August 2021 – see paragraph 16 of Mr Emilianou’s witness statement. It therefore does not appear to relate to a period after that.

Conclusion on the Claimant’s Claim

134. For the reasons set out above I have concluded that the Claimant was not entitled to refuse the Defendant’s orders to load the Neftisa Cargo, and its claim fails. Having not succeeded on liability, it is therefore unnecessary to rule on quantum and the remaining disputed items of damages.
135. The issue of time bar, however, was fully argued and, should the matter go further, I will deliver my judgment below in that regard.

Is the Claimant’s Claim time barred?

136. It is the Defendant’s case that the Claimant’s claim, being a non-demurrage claim, was time-barred because no claim in writing, with supporting documentation, was presented to the Defendant within 90 days of the alleged claims.
137. Clause 2A of the Defendant’s standard clauses, which formed part of the Charterparty, provided that:

*“CHARTERERS SHALL BE DISCHARGED AND RELEASED
FROM LIABILITY IN RESPECT OF ANY DEMURRAGE”*

CLAIMS OWNERS MAY HAVE UNDER THIS CHARTERPARTY (SUCH AS; BUT NOT LIMITED TO, CLAIMS FOR DEADFREIGHT, DEMURRAGE, SHIFTING OR PORT EXPENSES) UNLESS A CLAIM HAS BEEN PRESENTED IN WRITING TO CHARTERERS WITH SUPPORTING DOCUMENTATION WITHIN SIXTY (60) DAYS FROM COMPLETION OF DISCHARGE OF THE CARGO UNDER THIS CHARTERPARTY AND 90 DAYS FOR OTHER CLAIMS PROVIDED SUPPORTING DOCUMENTS ARE AVAILABLE (EXCLUDING B/L CLAIMS). (the “**Time Bar Clause**”)

The underlined words were specifically added to the Charterparty. Those struck through were specifically deleted.

138. It was common ground that time bar clauses are treated as limitation clauses and are interpreted strictly and in cases of real doubt, *contra preferentem*: see Lewison, *The Interpretation of Contracts*, 8th Edn, 12.150-12.155, *Arab Lawyers Network Co Ltd v. Thomson Reuters (Professional) UK Ltd* [2021] EWHC 1728 (Comm) at [44] per Mr Peter MacDonald Eggars KC, sitting as a Deputy Judge of the High Court at and *BP Oil International Ltd v. Vega Petroleum Ltd* [2021] EWHC 1364 (Comm) at [254], where Cockerill J stated:

“... if there is any doubt about what the time-bar clause means (i.e. whether it applies to any given set of facts is ambiguous) then that ambiguity in meaning should be resolved in such a way as not to prevent an otherwise legitimate claim from being pursued.”

The Claimants’ submissions on the Time Bar Clause

139. Mr Coldrick made three principal submissions as to why its claim was not time-barred. First, the 90 day period runs from the date of completion of the discharge, not the date of accrual of the cause of action. Here time never began to run under the Time Bar Clause, which required claims to be presented within the stipulated number of days after completion of discharge of the cargo under the Charterparty. No cargo was even loaded, let alone discharged, and so time never began to run under the clause: see [17]-[25] of *Odffell Seachem A/S v. Continentale des Petroles et d'Investissements (The “BOW CEDAR”)* [2004] EWHC 2929 (Comm); [2005] 1 Lloyd's Rep. 275 at 278-279 per Nigel Teare QC, then sitting as a Deputy Judge of the High Court and *BP Oil International Ltd v Vega Petroleum Ltd* at [247]-[250] per Cockerill J. The Defendant has given no example of a case where a time bar clause has been read as running from the date of accrual of the cause of action. To construe the clause this way would be to construe against the Claimant, precisely the opposite of the *contra preferentem* approach.
140. Secondly, the word “demurrage” was added before the word “claims” in the first part of the clause, such that, as amended, the clause only provides for the barring of demurrage claims. The words added at the end of the clause were poorly drafted and are difficult to understand. At best, they are ambiguous. They are not sufficiently clear to impose a general time bar. One would have to read in at the conclusion of the clause, words such as “*failing which such other claims shall too be barred*” in order to have an express

term barring “*other claims*”. It is neither obvious nor necessary that that should be done. The clause does not refer to “*any other claims howsoever arising*” and it is far from clear that the parties had in mind barring all claims of whatsoever nature, including claims for renunciation of the Charterparty or claims arising in circumstances where nothing is carried under the Charterparty.

141. The purpose of such a clause is to ensure that ordinary, everyday shipping claims such as claims in respect of port dues or agents fees or vessel/cargo related disbursements, cargo shortfall (‘deadfreight’) claims are presented quickly for practical/operational reasons, so as to enable such matters to be taken up promptly with the persons concerned – e.g. port agents, stevedores, the master and offices of the vessel and so forth. A claim for repudiatory breach of the whole charterparty is of a different character and it is unlikely to have been intended to be within the “*other claims*” referred to. Applying the *contra proferentem* rule, it should not apply to the present circumstances.
142. Thirdly, even if the clause did impose the time bar asserted, the email dated 24 November 2021, by which the Claimant terminated the Charterparty on the grounds of the Defendant’s alleged repudiatory breach was sufficient to satisfy the requirements of the clause, at least insofar as the claim for damages for repudiatory breach is concerned.

The Defendant’s submissions on the Time Bar Clause

143. Mr Shirley submitted that:
 - (1) demurrage claims receive separate treatment from other claims, and in respect of the former a claim must be presented in writing with supporting documents within sixty days of completion of discharge;
 - (2) bill of lading claims are outside the clause entirely;
 - (3) other claims must be presented in writing with supporting documents (insofar as they are available) within ninety days.
144. The three reasons advanced by the Claimant did not stand scrutiny.
145. As to the first point that time never started to run, it is only the *demurrage* time bar that is said to run from the completion of discharge, so only such a claim falls within the scope of the decision of Nigel Teare QC, as he then was, in *The Bow Cedar*. In that case at p278 rhc, the judge recognised that the purpose of time bar clauses was to ensure that claims are brought in a timely fashion, so that they can be investigated and, if possible, resolved while the facts are still fresh. There is, therefore, every reason to construe the Time Bar Clause so that it applies (and is not rendered ineffective in any case in which cargo is not discharged).
146. The present case is to be distinguished from *BP Oil v. Vega*. There, the relevant clause of the Charterparty, clause 32.3, only applied from delivery, actual or intended, and did not apply to all types of claim: see [127] and [250] of that decision.
147. The Claimant’s second reason is obviously wrong. The Time Bar Clause cannot conceivably be construed so that only demurrage claims are within its scope. The words “*AND 90 DAYS FOR OTHER CLAIMS*” are not remotely difficult to understand.

148. The third reason advanced by the Claimant, namely the terms of its termination email dated 24 November 2021, being relied upon as its written claim is absurd, because of the words used in the email. The email stated:

“Owners hereby accept the Charterer’s repudiatory breach and shall present their claim for damages forthwith.”

After ninety days, they had not done so.

Discussion and conclusion in the relation to the Time Bar Clause

149. For the first and second reasons advanced by the Claimant, I accept that the Claimant’s non-demurrage claim here is not time-barred.
150. In my judgment there is an ambiguity in the wording of the clause as to whether the words “*OTHER CLAIMS*” were intended by the parties to apply all claims of whatsoever nature, including claims for renunciation of the Charterparty or claims arising in circumstances where nothing is carried under the Charterparty. The clause does not refer to “*any other claims howsoever arising*”. That ambiguity should be resolved in favour of the Claimant.
151. Secondly if I am wrong and “*OTHER CLAIMS*” include the damages claim brought by the Claimant for repudiatory breach, there is an ambiguity as to when the 90 day period should start to run i.e. from the date of completion of the discharge, or the date of accrual of the cause of action. There is no time bar case which has been referred to by the Defendant which indicates that time runs from the accrual of the cause of action. If it only starts from the date of completion of discharge of the cargo, it never commenced. This rather suggests that it was not intended by the parties to deal with the present situation. Given there is this ambiguity, it should be resolved in favour of the Claimant and thus the Time Bar Clause does not prevent the Claimant validly presenting its claim.
152. For completeness, I should indicate that I reject Mr Coldrick’s third point. If the Time Bar Clause was effective, the wording of the Claimant’s email dated 24 November was insufficient to satisfy the requirements of the Time Bar Clause.
153. Had the Claimant’s claim otherwise succeeded, it would not have been time-barred.

The Counterclaim

154. The Defendant has a counterclaim for damages suffered by the cancellation of the Charterparty. The details are set out at paragraphs 40-41 of the Counterclaim, namely

*“ 41. By way of mitigation, Charterers shipped the Neftisa Cargo on the vessel "ZUMA", at a freight rate of US\$14.018/MT (Worldscale 90.00) ("**the Zuma Charter**") with a bill of lading date of 19 November 2021.*

42. The freight rate in the Charterparty was US\$11.68/MT (Worldscale 75.00), so by shipping the Neftisa Cargo under the Zuma Charter Charterers suffered a loss of US\$2.336/MT, or a total on 100,000MT of US\$233,600.”

155. Given my earlier findings, the Counterclaim succeeds in the sum of US\$233,600 and statutory interest.
156. There is, however, a further complication, namely that the Defendant in this matter has been added to the UK Sanctions List from 17 December 2024.
157. I will hear the parties as to the effect of this on my judgment and its enforcement on 31 July at 2pm when the judgment is handed down and consequential matters are considered. I would ask Counsel to prepare and endeavour to agree a draft form of Order.
158. It only remains for me to thank both Counsel once again for their considerable assistance in this matter and to apologise sincerely for the delay in getting this judgment to the parties. This was because of a serious illness and the subsequent death of a family member in the period following the hearing.